PT 97-33
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

ILLINOIS MASONIC MEDICAL CENTER, APPLICANT	)	**Docket No: 94-16-1420**
v.	)	**Real Estate Exemptions for 1994 Tax Year**
DEPARTMENT OF REVENUE STATE OF ILLINOIS	)	**P.I.N.: 14-29-214-004**
	)	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. George Michael Keane, Jr. of Keane and Keane appeared on behalf of the Illinois Masonic Medical Center.

SYNOPSIS: These proceedings raise the primary issue of whether 46% of a 95,578 square foot office building (hereinafter the "office building") which had not been exempted from 1994 real estate taxes pursuant to the Department of Revenue's (hereinafter the "Department") decision dated December 22, 1995 should be exempt from such taxes under 35 **ILCS** 200/15-65.[1] In relevant part, that provision states as follows:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
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> ***

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 **ILCS** 200\1-1 *et seq*).

(a) institutions of public charity.

Also at issue herein is whether an adjacent parking garage which occupies 71,225 square feet (hereinafter the "garage") should be exempted from 1994 real estate taxes under 35 **ILCS** 200/15-125, which states that "[p]arking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation]."

The controversy arises as follows:

On June 2, 1990, the Department determined that a portion of Cook County Parcel number 14-29-214-004 which Illinois Masonic Medical Center (hereinafter "IMMC" or the "applicant") uses as a medical center was exempt from real estate taxes under the then-existing version of Section 200/15-65. Applicant did not appeal this determination. However, on June 15, 1995, IMMC filed another real estate exemption complaint with the Cook County Board of Tax Appeals (hereinafter the "Board") as to the office building and the garage.

The Board reviewed IMMC's complaint and recommended to the Department that the office building and the garage be granted full year exemptions. On December 22, 1995, the Department partially accepted this recommendation by issuing a certificate exempting 54% of the office building and the land beneath. The certificate further found that the remaining 46% of the office building and the entire garage were not in exempt use.

Applicant filed a timely request for hearing as to the portions denied exemption on January 8, 1996. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on September 4, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination dated December, 1995 be modified to reflect that 46% of the office building (together with an appropriate

percentage of the underlying land) not be exempt from 1994 real estate taxes but that the entire garage be exempt from same.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that 46% of the office building and 100% of the garage were not in exempt use during 1994, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. The office building and the garage are part of a larger complex that is located on Cook County Parcel Number 14-29-214-004. IMMC acquired its ownership interest therein via a special warrantee deed dated December 17, 1990. Dept. Group Ex. No. 1; Applicant Ex. No. 3; Tr. p. 17.

3. The entire complex is commonly known as 3000 North Halsted Street, Chicago, IL and features applicant's medical center or hospital, (hereinafter the "medical center"), employee housing for interns, residents, nurses, etc, administrative offices, an MRI facility, a cancer center, a day care center and various parking facilities that are not at issue in this proceeding. Applicant Group Ex. No. 8; Tr. pp. 27 - 31.

4. On December 17, 1990, the Department determined that the medical center itself and certain parking facilities adjacent thereto were exempt from real estate taxation under the then-existing version of 35 **ILCS** 200/15-65. Administrative Notice.

5. The office building and the garage were under construction throughout most of the 1994 tax year. Applicant decided to build these facilities for several reasons, most of which related to its perceived need for additional space to accommodate the increasing needs of and heightened demands for its emergency and outpatient services. Tr. pp. 15 - 16.

6. The office building is located directly across North Dayton street from the medical center and connected thereto by a skybridge. It is 8 stories

tall and occupies 95,578 square feet. Dept. Group Ex. No. 1; Applicant Ex. Nos. 7, 8. Tr. p. 28.

7. The office building was first occupied in December of 1994, whereafter 54% of its space was used to conduct certain medical center programs which included one devoted to the needs of geriatric patients as well as various in-and-out-patient cardiology programs and a faculty group that provided training to the medical center's ObGyne residents. Dept. Group Ex. No. 1; Tr. pp 46 - 47.

8. Another 36% of the office building was leased to physicians. The two lessees who moved into their respective offices during 1994 were Dr. Gerald Kaplan, a surgeon, and Dr. Curtis Wisler, an orthopedic specialist. Applicant Ex. Nos. 14A; 15A and 15B.

9. Although Drs. Kaplan and Wisler moved into their respective offices on October 1, 1994, they did not actually begin seeing patients until February of 1995. Tr. p. 54.

10. Dr. Kaplan's lease with applicant provided, *inter alia*, that:

> A. The demised premises consisted of 1,446 square feet of rentable space on the third floor of the office building;
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> B. The leasehold was to commence on May 1, 1994 and end on September 30, 1999;
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> C. Dr. Kaplan make total monthly base rental payments of $3,133.00 plus certain expense adjustments throughout the term of the lease except that the first full calendar month of the term was to be free;
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> D. Dr. Kaplan was to use the leasehold premises for no purpose other than "medical office purposes in connection with the private practice of medicine ...[.]"

Applicant Ex. No. 15A.

11. Dr. Wisler's lease with applicant pertained to a different area of the office building and commenced June 15, 1994. It was scheduled to run through September 30, 1999 and provided, *inter alia*, that Dr. Wisler was to make monthly rental payments of $1,635.83 plus certain rental adjustments throughout the term of the lease except that the first full calendar month thereof was to

be free. The lease further provided that Dr. Wisler was prohibited from using the leasehold for any purpose other than "the private practice of medicine." Applicant Ex. No. 15B.

12. The remaining space was divided between two areas, 7% of which remained vacant after the office building opened. Applicant reserved the other 3% for "future use." Dept Group Ex. No. 1.

13. Like the office building, the garage is located directly across North Dayton Street from the medical center and connected thereto by a walkway. It is 5 stories tall, occupies 71,225 square feet and can accommodate 438 cars. Dept. Group Ex. No. 1; Applicant Ex. No. 7 & 8.

14. The garage opened in October of 1994. Because the office building was not open at that time, initial use of the parking facilities was limited to medical center employees. These facilities were opened to non-employees at a later but unspecified date. Applicant Group Ex. No. 8; Tr. pp. 28, 71.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the remaining 46% of the office building (and an equivalent percentage of the underlying land) from 1994 real estate taxes under 35 ILCS 200/15-65. However, it has presented sufficient evidence and argument to warrant exempting the parking garage from such taxes under 35 **ILCS** 200/15-125. Accordingly, under the reasoning given below, the Department's findings that these portions of Cook County Parcel Number 14-29-214-004 were not used for purposes that qualify as exempt under Sections 200/15-65 and 200/15-125 during 1994 should be modified as set forth below. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and

> school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq*. The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
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> ***
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> (a) institutions of public charity.

35 **ILCS** 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154

Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

In this case, I take administrative notice of the Department's determinations dated December 17, 1990 and December 22, 1995, both of which establish that this applicant is an "institution of public charity." Notice of the latter determination further verifies that IMMC used 54% of the office building (and an equal percentage of the underlying land) for purposes that ostensibly were "reasonably necessary" to further the already exempt operations of the medical center during 1994. *See*, Memorial Chid Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992).

Applicant has not challenged either finding in the present proceeding. Accordingly, I shall leave same undisturbed and limit any remaining analysis to the following inquiries: first, whether the remaining 46% of the office building (and an equal percentage of the underlying ground) were in exempt use during 1994; and second, whether any or all of the garage qualifies for exemption under 35 **ILCS** 200/15-125, which states that "[p]arking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or

charitable institutions which meets the qualifications for exemption, are exempt [from real estate taxation]."

Analysis of these topics begins with the recognition of the fundamental principle that "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose." Therefore, the "[i]ntention to use is not the equivalent of actual use." Skil Corporation v. Korzen, 32 Ill.2d 249 (1965) (hereinafter "Skil"); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

In Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), the court held that a portion of appellant's health care facility could be exempted from real estate taxes even though it was under construction during the year in question. While the Weslin Properties holding makes clear that the "charitable use" requirement can be satisfied where the applicant proves that the subject parcel is being developed for exempt purposes, the following discussion will demonstrate than none of the non-exempt portions of the office building were being developed or actually used for appropriate purposes during 1994.

Most of the non-exempt portion (36% thereof) was being developed for rental purposes. Such use violates the elementary principle, first enunciated in People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) (hereinafter "Baldwin"), that "[i]f real estate is leased for rent, whether in cash or other form of consideration, it is used for profit." Baldwin at 140. Thus, "[w]hile the application of income to charitable purposes aids the [purported] charity, the primary use of [the parcel in question] is for [non-exempt] profit." *Id*. *See also*, Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

Applicant seeks to defeat the above conclusion by citing People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944), for the proposition that leasing will defeat exemption only where it is done "with a view to profit." While the plain language of Section 200/15-65 does contain this limitation, the leases submitted as Applicant Ex. Nos. 15A and 15B make no mention of any use which would further the applicant's exempt purpose. Rather, they clearly indicate that both Drs. Kaplan and Wisler were to use their respective leaseholds for no purpose other than carrying on their non-exempt private practices. In this sense, then, the 36% of the office building which was being developed for such private practices during 1994 was not in exempt use during that time. *See*, Mason District Hospital v. Tuttle, 61 Ill. App.3d 1034 (4th Dist. 1978). Therefore, the Department's determination as to that same 36% should be affirmed.

With respect to the 7% of the office building that was vacant during 1994, I note that vacancy neither constitutes an exempt use nor alleviates the above-stated actual use requirement. *See*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983). Furthermore, neither this portion of the office building nor the 3% which applicant reserved for "future use" qualify for exemption under Weslin Properties because applicant did not submit any evidence establishing that either was being developed for a specifically identifiable exempt use during 1994. Consequently, I conclude that applicant's evidence as to these portions is speculative, and therefore, legally insufficient to sustain its burden of proof. Therefore, those portions of the Department's determination pertaining to the remaining 10% of the office building should be affirmed.

The entire preceding discussion establishes that none of the remaining 46% of the office building was in exempt use during 1994. Therefore, that the portion of the Department's determination which affects the equivalent percentage of the underlying ground should also be affirmed.

The above analysis does not address whether the parking garage should be exempt under Section 200/15-125. That provision clearly exempts parking facilities, provided that they service buildings that are in exempt use.

As noted above, 46% of the office building was not in not in exempt use during 1994. Nevertheless, the Department's determination in 1990 exempted not only the medical center but also other parking areas adjacent thereto. Thus, administrative notice of this determination provides the requisite nexus with a facility used for exempt purposes, especially in light of the evidence establishing that use of the garage was initially limited to medical center employees. For these reasons, and because the Weslin Properties holding establishes that the garage is entitled to exemption for the portion of 1994 wherein it was under construction, I conclude that the entirety of same should be exempted from 1994 real estate taxes under Section 200/15-125.

Despite the above, it appears that opening of the office building could cause some or all of the garage to be used for non-exempt purposes in future years. If this should come to pass, such use could affect the garage's exempt status pursuant to Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981). (A determination of exempt or taxable status for one year is not res judicata for any other tax year even where ownership and use remain the same). With this caveat then, that portion of the Department's determination dated December 22, 1995 which pertains to the garage should be reversed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that 46% of the medical building and an equivalent percentage of the underlying land not be exempt from 1994 real estate taxes. However, I further recommend that the 71,225 square feet of Cook County Parcel Number 14-29-214-004 (and the appropriate amount of underlying land) wherein the parking garage is situated be exempt from same.

Date

Alan I. Marcus
Administrative Law Judge